IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7119 of 1991

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

POPALTLAL J DAVE SINCE DECEASED THRO HIS HEIRS

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR MUKESH H RATHOD for Petitioner No. 1-1/4

MR PRANAV G DESAI for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 24/01/2003

ORAL JUDGEMENT

1. By filing instant petition under Article 226 of the Constitution of India, the deceased petitioner has prayed to quash the order dated June 25, 1990, passed by the Divisional Controller of Gujarat State Road Transport Corporation, by which his services came to be terminated with effect from June 19, 1990, as Mr. P.J. Dave,

Superintendent, General Hospital, Sola, Ahmedabad, had certified that the petitioner was unfit to perform duties as conductor. The deceased petitioner has also prayed to direct the respondents to pay full backwages from June 19, 1990 to June 20, 1991 i.e. the date on which, after recategorisation, he was appointed as helper at Viramgam Depot. The original petitioner died during the pendency of the petition and, therefore, his heirs and legal representatives have been brought on the record of the petition.

2. The deceased petitioner was employed as a conductor with Gujarat State Road Transport Corporation. His eye sight had become weak and therefore by a letter dated December 29, 1989, he had represented to the Divisional Controller to the effect that he should be asked to perform duties as a helper or a peon. His medical examination was conducted and by certificate dated February 21, 1990, issued by the competent authority, the deceased petitioner was declared to be unfit for performing duties as a conductor. On the basis of the said certificate the respondent no.2 terminated his services vide order dated June 25, 1990, which is produced at Annexure-B to the petition. The claim of the deceased petitioner was that before terminating his services as conductor, the respondent no.2 had not considered the contents of the application dated December 29, 1989, and as he was ready and willing to work on any lower post like a helper or a peon, his services should not have been terminated. It was also his claim that before terminating his service, opportunity of being heard was not given to him. According to him, as per Regulation No.61 of the Regulations framed by the Gujarat State Road Transport Corporation, he was entitled to two months notice or salary in lieu of notice and that his retrenchment from the service was contrary to the provisions of the Industrial Disputes Act, 1947. What was averred by the deceased petitioner was that on realising the mistake committed by the respondent no.2, the respondent no.2 had again sent him for medical examination to ascertain whether the petitioner was fit to perform duty on any other post and that in view of the contents of certificate dated April 9, 1991, issued by the Superintendent, Civil Hospital, Sola, Ahmedabad, he was appointed on the post of helper by an order dated June 20, 1991. Under the circumstances, the deceased petitioner had filed instant petition and claimed that the order dated June 25, 1990 passed by the respondent no.2 terminating his services as conductor should be set aside and that the respondents should be directed to pay backwages for interregnum period i.e. from June 19, 1990

to June 20, 1991.

3. Though the respondents are duly served, no affidavit in reply has been filed by any of them controverting the averments made in the petition.

4. The Court has heard the learned counsel for the respective parties and considered the documents forming part of the petition.

5. From the record of the case it is evident that the services of the deceased petitioner as conductor were terminated pursuant to the certificate dated February 21, 1990, issued by the competent authority without ascertaining whether he was fit to perform duties on any lower post. It was the duty of the respondent no.2 to consider the question whether the deceased petitioner was fit to perform duties on a lower post, and without ascertaining this fact, the services of the petitioner could not have been terminated on the basis of certificate issued by Superintendent, General Hospital, Sola, Ahmedabad, which indicated that the deceased petitioner was not fit to perform duties as conductor. It is an admitted position that with effect from June 20, 1991, the deceased was appointed on the post of helper and thereafter he has expired. The fact that because of his weak eye sight the deceased petitioner was not able to perform duties as conductor is not disputed and therefore the first prayer made by the deceased petitioner that order dated June 25, 1990, terminating his services as conductor should be set aside, cannot be accepted. So far as prayer to direct the respondents to pay full backwages for the interregnum period, i.e. from June 19, 1990 to June 20, 1991 is concerned, the learned counsel for the petitioners has stated at bar that the petitioners would be satisfied if the respondents are directed to pay 50% of backwages for the interregnum period. As observed earlier, in spite of opportunity having been given, the respondents have not contested this petition. Having regard to the facts of the case, the Court is of the opinion that interest of justice would be served if the respondents are directed to pay 50% of backwages for the interregnum period i.e. from June 19, 1990 to June 20, 1991.

5. For the foregoing reasons, the petition partly succeeds. The prayer to quash the order dated June 19, 1990, passed by the respondent no.2 by which the services of the deceased petitioner were terminated, is rejected. The respondents are directed to pay 50% of backwages payable to the deceased petitioner as conductor from June

19, 1990 to June 20, 1991 to the petitioners as early as possible and preferably within three months from today. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

[J.M. PANCHAL J.]

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